

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2011-140
)	
PC&C Enterprises, LLC)	
)	
)	
Department of Transportation)	POSTING DATE: December 19, 2011
IFB No. SB10353)	
Annual Contract for LED Blankout)	MAILING DATE: December 19, 2011
<u>Signs – Statewide</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from PC&C Enterprises, LLC (PC&C) filed October 17, 2011. With this invitation for bids (IFB), the South Carolina Department of Transportation (SCDOT) attempts to procure an annual contract for Light Emitting Diode (LED) blankout signs. In the letter, PC&C protested SCDOT's intent to award to RAI Products (RAI) alleging RAI was nonresponsive and not responsible, as well as seven "other grounds."

In order to resolve the matter, the CPO conducted a hearing on December 8, 2011. Appearing before the CPO were PC&C represented by George Pennington, Andre' Woods, and Jacqueline Brown; RAI, represented by John Rosenblatt; and SCDOT, represented by Glennith Johnson, Esquire.

NATURE OF PROTEST

The letter of protest with all attachments is attached and incorporated herein by reference.¹

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 8, 2011, SCDOT published the IFB. (Ex. 1)

¹ On October 19, 2011, PC&C resent its protest letter along with multiple attachments.

2. On August 19, 2011, SCDOT closed the question and answer period offered by the IFB.
3. On August 30, 2011, SCDOT opened the following bids received:

<u>Bidder</u>	<u>Bid Amount</u>
RAI	\$43,488
PC&C	96,462
(Ex. 5)	

4. On October 14, 2011, SCDOT posted its intent to award to RAI. (Ex. 7)
5. On October 17, 2011, PC&C protested to the CPO.
6. On October 25, 2011, according to law, SCDOT suspended its intent to award. (Ex. 8)

CONCLUSIONS OF LAW

Protest Ground A: Nonresponsiveness

In protest ground A, PC&C alleged RAI's bid was nonresponsive. Quoting the protest letter, PC&C wrote, in its entirety, "The intended Contractor has violated the requirements and conditions detailed in items (c) (d) (e) under responsiveness/Improper offers segment of the code."

SCDOT argued the protest letter was deficient in that it did not provide sufficient particularity to notify the parties of the issues to be decided. Citing South Carolina Code section 11-35-4210(2), which requires that a protest "set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided", SCDOT made a motion that the CPO dismiss the protest issue as vague.

The CPO agrees that this issue must be dismissed. PC&C's reference merely to "items (c), (d), and (e) under responsiveness/Improper offers segment of the code" is not adequate to notify the parties of the issues to be decided. The South Carolina Consolidated Procurement Code (The Code) contains many sections containing items (c), (d) and (e). The Code has no section entitled

“responsiveness/improper offers.” It does define a responsive bidder or offeror as “a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals” (11-35-1410(7)), but the definition does not include items (c), (d), or (e). The referenced “responsiveness/improper offers segment of the code” simply does not exist in the Code.

Not until the hearing did it became clear that PC&C’s reference in this ground was actually to the IFB, not the Code. The IFB contains a provision entitled Responsiveness/Improper Offers that includes items (a) – (e). (Ex. 1, p. 9) Item (c) Responsiveness, reads in part, “[a]ny Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive.” Item (d) Price Reasonableness of the IFB reads, “[a]ny offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price”, which PC&C does not allege here. Item (e) Unbalanced Bidding, reads, in part, “the State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items”, which PC&C also does not allege here.

In its protest letter PC&C did not specify why or how they alleged RAI was nonresponsive to any of the requirements of the IFB; therefore, PC&C provided no particular notice of the issues to be decided. Section 11-35-4210(2) of the Code requires a protestant to notify the parties of the issues to be decided in the written protest letter and to state them with particularity. It is not sufficient to withhold clarity of the issues until the hearing. Further, the South Carolina Procurement Review Panel has dismissed issues of protests that were too vague. For example, in Protest of Blue Cross and Blue Shield, Panel Case No. 1996-9, the Panel granted a motion to dismiss as vague the issue of a vendor’s bid violating age rating guidelines in federal law. In that case, the Panel found that the protest letter did not specify how the bid was not in compliance or specify the parts of the law to which the bid was not in compliance. Also, Protest of DP Consultants, Inc., Panel Case No. 1998-6, the Panel found that a protest issue was too vague and the Panel lacked jurisdiction to rule on it where the stated issue did not

allege a specific requirement and how the specific requirement failed to be met. Therefore, consistent with the Panel's precedent, SCDOT's motion to dismiss this ground as vague is granted.²

Protest Ground B – Not Responsible

In protest ground B, PC&C alleged, "The intended Contractor has not met the requirements laid out in Items a through e of the certifications and representations clauses inherent in and detailed in the code."

SCDOT argued this protest ground was deficient as well in that it did not provide sufficient particularity to notify the parties of the issues to be decided. Again, citing Section 11-35-4210(2), which requires that a protest "set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided", SCDOT made a motion that the CPO dismiss the protest issue as vague arguing "PC&C claims that the intended contractor is not responsible because of a failure to meet the requirements laid out in items (a) through (e) of the certifications and representations clause inherent and detailed in the Code. That left SCDOT to speculate on which provisions of the Code PC&C is alleging RAI did not meet and therefore should be determined not responsible."

The CPO agrees. Not until the hearing did we learn that PC&C's allegation was again a reference to the IFB, not the procurement code, as the protest indicates. Not until the hearing did we learn that PC&C's contention was that RAI had failed to comply with the provision of the solicitation entitled "Certification Regarding Debarment and Other Responsibility Matters" based on alleged

² Even if the CPO had jurisdiction to rule on this ground, the CPO notes that PC&C's claim should fail. At the hearing, the CPO had held his ruling on this motion in abeyance and permitted the parties to present evidence, at which time PC&C elaborated on its allegation that RAI's bid was nonresponsive. The only issue offered during the hearing was that RAI's product did not conform to section 1.2.1.3, Visor, of the IFB, which reads, in relevant part, "[a] three sided aluminum visor of not less than 0.063 inch thickness and 7 inches deep shall also be furnished." (Ex. 1, p. 14, Emphasis added)

In its bid, regarding the visor, RAI offered a "12" deep aluminum visor for increased visibility." (Ex. 3, unnumbered page next to the last) PC&C argued that RAI's 12" deep visor was nonresponsive to the IFB's specification

conduct of the manufacturer of its signs, Tassimco Technologies Canada, Inc. The provision requires each bidder, by submittal of a bid, to certify that over the last three years it or its principals have not been convicted nor had a civil judgment rendered against them for a multitude of criminal offenses relating to business conduct. (Ex. 1, p. 5)

The protest letter failed to advise the parties that the allegation regarded a requirement of the IFB, not the entire Code. Moreover, it failed to identify which requirement of the IFB was violated and how it was violated. Pursuant to Section 11-35-4210(2) of the Code, the CPO does not have jurisdiction to rule on an issue where the protest letter does not state it with “enough particularity to give notice of the issues to be decided”. Therefore, the SCDOT motion to dismiss as vague is granted.³

Protest Ground C

In protest ground C, PC&C alleged “[t]he intended contractor has not met the qualifications standards detailed in the Standards of Responsibility R.19.445.2125.”

Ms. Margaret Oswald, SCDOT’s Procurement Manager, testified that she conducted a responsibility determination on the intended awarded vendor, RAI. According to Ms. Oswald, RAI is the incumbent contractor and has performed well under the current contract. She also checked the Federal website for debarments to ensure that RAI had not been debarred or proposed for debarment. Moreover, she checked the internet to ensure that RAI had no pending litigation against it. Therefore, she determined that RAI was a responsible bidder because it was capable of meeting all contractual requirements, had a satisfactory record of performance and integrity, and was qualified legally to contract with the State.

that the visor be 7 inches deep. However, the IFB required that the visor be “not less than” 7 inches. Therefore, RAI’s bid offering a 12” deep visor would be deemed responsive.

³ The CPO had held the motion in abeyance and allowed the parties to present evidence at the hearing, as previously noted. Even if the CPO did have jurisdiction on this ground, PC&C failed to meet their burden of proving this claim by a preponderance of the evidence.

Section 11-35-1410(6) of the Code defines a responsible bidder as “one who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.” A procurement officer has an obligation to determine responsibility prior to award. S.C. Code § 11-35-1810. A procurement officer’s decision regarding responsibility is a matter of discretion and will not be overturned absent a showing that it is “clearly erroneous, arbitrary, capricious, or contrary to law.” See S.C. Code § 11-35-2410(A); See also, Protest of CollegeSource, Inc., Panel Case No. 2008-4.

PC&C offered no evidence worthy of a conclusion that RAI is not responsible. Therefore, this ground is denied for failure by PC&C to prove by a preponderance of the evidence that SCDOT’s determination that RAI was responsible was clearly erroneous, arbitrary, capricious, or contrary to law.

Other Grounds A

In protest Other Grounds A, PC&C alleged “the State has violated its own Code of Laws by awarding a contract to a contractor who has been called into question along with a supplier who has been determined to be a Bid Rigger.”

At the hearing, PC&C presented no evidence whatsoever that RAI was guilty of bid rigging. Therefore, this ground is denied for failure by PC&C to prove the allegation by the preponderance of the evidence. To the extent that PC&C alleges that RAI’s manufacturer, Tassimco Technologies Canada, Inc., was guilty of bid rigging, and therefore RAI was somehow guilty, PC&C failed to prove their claim in this regard and it is also denied.

Other Grounds B, C, E, F

In protest Other Grounds B, PC&C alleged “[t]he SCDOT Procurement Officer has operated in bad faith setting up a process by which a vendor becomes a sole source without substantiation.”⁴ In protest Other Grounds C, PC&C alleged “[t]he Procurement Office restricted and eliminated

competition by placing the supplier controlled product on its qualified list as the specified item allowing the supplier to bid on the solicitation. The supplier refused to provide the specified item and its prices to competitive bidders thereby virtually eliminating all competition.” In Other Grounds E, PC&C alleged “SCDOT further undermines open competition by not specifying and providing clarity with regard to substitutions.” In Other Grounds F, PC&C alleged “SCDOT and the intended award recipient has violated its own code by failing to advise the proper parties about any aspect of this solicitation and proposed procurement that unnecessarily and inappropriately limits full competition.”

SCDOT offered a motion asking the CPO to dismiss these grounds as untimely filed on the basis that the allegation attempts to challenge the process as established by the IFB and the specifications contained in the IFB.

The CPO agrees. The Code offers bidders two opportunities to protest. First, a prospective bidder may protest the specifications within fifteen (15) days of issuance of the solicitation; second, an actual bidder may protest the award. S.C. Code §§ 11-35-4210(1)(a) and 11-35-4210(1)(b). Regarding a protest of award, Section 11-35-4210(1)(b) of the Code grants an actual bidder the opportunity to protest an award, “except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.” In other words, a bidder cannot simply “wait until after he loses the contract to complain” about the solicitation. If a bidder alleges defects in the solicitation, he or she must protest within the time limits for protesting the solicitation as defined in Section 11-35-4210(1)(a). Moreover, a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award.

The Panel has repeatedly held that the time for filing is jurisdictional and cannot be waived. See Protest of Jones Engineering Sales, Inc., Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is

⁴ PC&C withdrew the portion of this allegation that the “State Procurement Officer in conjunction with.”

jurisdictional and may not be waived); Protest of National Cosmetology Ass'n, Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); Protest of Vorec Corporation, Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment).

PC&C asserts that this protest is of the award. However, in these grounds PC&C clearly attempts to challenge the specifications that were established when SCDOT issued the IFB August 8, 2011. PC&C waited to file its protest letter until October 17, 2011, which was well after the time to protest the solicitation had expired. Therefore, the CPO has no authority to rule on Other Grounds B, C, E, and F, and they are dismissed as untimely.⁵

Other Grounds D

In Other Grounds D, PC&C alleged “SCDOT Procurement has participated in an act of collusion prohibited in the code of laws if it awards as specified in the notice.” PC&C offered no probative evidence to prove SCDOT guilty of this very serious allegation. Therefore, this ground is denied for failure by PC&C to prove the allegation by the preponderance of the evidence.

Other Grounds G

In Other Grounds G, PC&C alleged, “The solicitation specifies an annual fixed price contract yet SCDOT has already intended to award (5) Five years on contract by posting an unconditional

⁵ In all these grounds, PC&C’s alleges SCDOT prevented PC&C from bidding through the use of a pre-qualified products list that only allowed bidders to bid Tassimco blank out signs, which RAI would not sell PC&C. However, the IFB made no mention of the pre-qualified products list. Further, the IFB did not limit bidders to offering Tassimco products. According to Carol Jones, SCDOT Traffic Signal Engineer, SCDOT does maintain a pre-qualified products list for contractors bidding for road construction contracts, which are exempt from the Code (11-35-710(1)), but this procurement, which is subject to the Code, did not incorporate the pre-qualified products list requirement.


As noted above, according to SCDOT officials, SCDOT does maintain a pre-qualified products list for contractors bidding for road construction contracts, which are exempt from the Code (11-35-710(1)), for which the CPO has no jurisdiction. Although that issue is not before the CPO, the CPO is dismayed that the SCDOT qualified products list for exempt procurements for road construction would qualify only one manufacturer for blackout signs.

amount equaling (5) years.” In making this allegation, PC&C points to the SCDOT intent to award that states the award amount is \$217,440, which is RAI’s annual bid times five.

This is clearly a typographical error on the award statement. SCDOT’s award statement should have indicated RAI received an award of the contract for one year for \$43,488 with the prospect of a total potential award of \$217,440 if all optional extensions are exercised. However, the CPO finds that, read as a whole, SCDOT can only guarantee RAI the contract for one year. The IFB was clear in that it offered the bidders an award for one year with four options to extend. It reads, “The initial term of this agreement is one year from the effective date.” (Ex. 1, p. 24, Term of Contract – Effective Date/Initial Contract Period) The IFB reads further that the initial contract term is, “One (1) year from the date of award” and “The extensions may be less than, but will not exceed four (4) additional one year periods.” (Ex. 1, p. 24, Term/Option to Extend – Initial Contract Period) Even though it lists the award amount for the entire potential period, the Intent to Award also describes this as an “annual contract for LED blackout signs.” (Ex. 7) Therefore, this protest ground is denied for failure to prove that SCDOT awarded a five year contract. However, SCDOT should correct this typographical error when it reinstates the award to reflect the annual contract amount as well as the total potential value of the contract if all options are exercised.

DETERMINATION

For the aforementioned reasons, the protest is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

12/19/2011

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2011)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

Skinner, Gail

From: Protest-MMO [Protest-MMO@mmo.sc.gov]
Sent: Wednesday, October 19, 2011 11:52 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation Number SB10353
Attachments: blackout signs order-notes-Andre.docx; NOTES-Tassimco-Indictment.docx; IMPORTANT INFORMATION FOR OFFERORS-qualifies-Tassimco.docx; Tassimco products are available in Alaska.docx; Intent to Award - SB10353 Copy.pdf

From: George Penington[SMTP:MISTERGWP@GMAIL.COM]
Sent: Wednesday, October 19, 2011 11:51:56 AM
To: Protest-MMO
Cc: oswaldmj@scdot.org; Andre V. Woods; Conner, Ron
Subject: Fwd: Solicitation Number SB10353
Auto forwarded by a Rule

Please verify receipt of this email and attachments

This is in response to a call from David Rawlins stating that there was no SCDOT Qualified Product list for Tassimco, He did not believe me . Mr. Rawlins also referred to Mr. Rosenblatt and denied that he was the only other bidder, when I told him I could not get a price from Rosenblatt because he was planning on bidding this job himself. David Rawlins said that Rosenblatt's bid was lower yet when he emailed the INTENT TO AWARD it showed RAI's amount was for money. I bid \$80,000.00 and RAI bid over \$217,000.00. Rawlins (SCDOT) and Rosenblatt(RAI Products) have worked together over the past 5 years.

Please make sure that you have the attached documents. You will also be receiving an email from my company manufacturer McBain verifying they were told they could not bid because Tassimco had the only qualifying product.

Chief Procurement Officer
 Materials Management
 1201 Main Street, Suite 600
 Columbia, SC 29201

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15,2011

Blankout Signs
 Margaret J Oswald, CPPB Procurement Officer
 email : oswaldmj@scdot.org

Dear Sir/Madame;
 Please accept this correspondence as my official notice of protest of the above referenced award, copy enclosed, as prescribed in Section 11-35-4210 of the Code.

GROUNDS FOR PROTEST

12/19/2011

A. NON RESPONSIVENESS

The intended Contractor has violated the requirements and conditions detailed in items (c) (d) (e) under the responsiveness/Improper offers segment of the code.

B. NOT RESPONSIBLE

The intended Contractor has not met the requirements laid out in Items a through e of the certifications and representations clauses inherent in and detailed in the code.

C. The intended contractor has not met the qualifications standards detailed in the Standards of Responsibility R.19-445.2125

OTHER GROUNDS

A. The State has violated its own Code of Laws by awarding a contract to a contractor who has been called into question along with a supplier who has been determined to be a Bid Rigger.

B. The State Procurement Officer in conjunction with SCDOT Procurement has operated in bad faith setting up a process by which a vendor becomes a sole source without substantiation.

C. The Procurement Office restricted and eliminated competition by placing the supplier controlled product on its qualified list as the specified item then allowing the supplier to bid on the solicitation.

The supplier refused to provide the specified item and its prices to competitive bidders thereby virtually eliminating all competition.

D. SCDOT Procurement has participated in an act of collusion prohibited in the code of laws if it awards as specified in the notice.

E. SCDOT further undermines open competition by not specifying and providing clarity with regard to substitutions.

F. SCDOT and the intended award recipient has violated its own code by failing to advise the proper parties about any aspect of this solicitation and proposed procurement that unnecessarily and inappropriately limits full and open competition.

G. The solicitation specifies an annual fixed price contract yet SCDOT has already intended to award (5) Five years of contract by posting an unconditional amount equaling (5) years.

RELIEF

I am requesting the abandonment of the proposed award based on one or more of the issues stipulated. I am requesting that the In-State Contractor and Certified SCDOT Contractor **Vendor #7000124529** be awarded this contract as the next lowest responsive responsible contractor.

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15,2011
Margaret J Oswald, CPPB Procurement Officer
email : oswaldmj@scdot.org

----- Forwarded message -----

From: **George Penington** <mistergwp@gmail.com>

Date: Mon, Oct 17, 2011 at 6:34 AM

Subject: Fwd: Solicitation Number SB10353

To: protest-mmo@mmo.state.sc.us, oswaldmj@scdot.org

Cc: ron.conner@itmo.sc.gov, "Andre V. Woods" <andrevwoods@gmail.com>

copy to Andre V Woods, Market Director for PC&C Enterprises and George W Penington

Chief Procurement Officer
Materials Management Office

12/19/2011

1201 Main Street, Suite 600
Columbia, SC 29201

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15,2011
Blankout Signs
Margaret J Oswald, CPPB Procurement Officer
email : oswaldmj@scdot.org

Dear Sir/Madame;

Please accept this correspondence as my official notice of protest of the above referenced award, copy enclosed, as prescribed in Section 11-35-4210 of the Code.

GROUND FOR PROTEST

A. NON RESPONSIVENESS

The intended Contractor has violated the requirements and conditions detailed in items (c) (d) (e) under the responsiveness/Improper offers segment of the code.

B. NOT RESPONSIBLE

The intended Contractor has not met the requirements laid out in Items a through e of the certifications and representations clauses inherent in and detailed in the code.

C. The intended contractor has not met the qualifications standards detailed in the Standards of Responsibility R.19-445.2125

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12/19/2011

George W. Penington
Construction Consultant
Construction Group
Home office: (843) 556-4492
cell: (843) 469-8371

The information contained in this email is intended only for the use of the individual to whom it is addressed and may contain privileged and/or confidential information that is exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that you should not read any further, and any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this email in error, please notify the sender immediately and delete this transmission. Thank you.

----- Forwarded message -----

From: **George Penington** <mistergwp@gmail.com>
Date: Fri, Oct 14, 2011 at 11:19 AM
Subject: Solicitation Number SB10353
To: oswaldmj@scdot.org

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15, 2011
Margaret J Oswald, CPPB Procurement Officer
email : oswaldmj@scdot.org

A protest is being filed due to an agrievement in connection with an intended award or award of a contract on the grounds of improper notifications in regard to results of bid offers, discrimination due to unfair review of competitors products, competition not providing pricing as requested, competitor allowed to submit bid despite company being guilty of bid rigging. Public bid opening not being held properly or being held without proper notification. The relief requested at this time is to correct the alleged improprieties.

Filed by email. Will file in writing as necessary.

George W Penington
Construction Consultant
PcC Enterprises, LLC Vendor #7000124529
843-469-8371
fax: 843-556-4492
email: mistergwp@gmail.com

12/19/2011

To: Andre V Woods: Copy of my notes about this bid. 8/19/2011
 276 Ashley Ave.
 Charleston, SC 29402
 email: andrevwoods@gmail.com

Solicitation: SB10353
 Annual contract for LED Blankout Signs - Statewide

Hey Andre', I talked to Rosenblatt, the rep for Tassimco and he said he would not give me a price for these Blankout signs because he was bidding it. I told him, he was the only dealer around for this area, so I didn't have much choice in the matter. It turns out that his company is called RAI Products and they are not even in South Carolina. I told him to go ahead and give me the prices anyway and he refused. I told Rosenblatt that I wanted to talk to the president of the company and he told me he was the president. I called Tassimco in Washington, and several other states out west but they would not give me prices either and kept referring me to Rosenblatt. I finally got someone at Pelco who sent me the plans and specs for all the mounting equipment with the prices. The plans were marked for South Carolina, so I lucked up. You know I finally got to represent McCain who originally said Tassimco had the State locked up for the past ten years and they didn't think I had a chance, they also said they had not bid it because of the qualified product list. I told them that their signs were actually better, because the specs were old that SCDOT was using and the model number was out of date. I also told them that just because I am wheelchair bound didn't mean I give up the good fight easily...lol Andre', you know why I want this job don't you. If they had put these lights up at my intersection, I wouldn't have been run over by that truck. These lights will save lives.

SCDOT 2011 Qualified Products List					
Item	Manufacturer	Product Name	Model Number	Quantity	Unit Price
1	Symbolic LED	Symbolic LED (Light Emitting Diode) NO RIGHT/ BLANKOUT SIGN, of CLAM-SHELL CONFIGURATION, with SUN VISOR and designated mounting hardware.		1	\$1,200.00

1) Symbolic LED Blankout Sign, Symbolic LED (Light Emitting Diode) NO RIGHT/ BLANKOUT SIGN, of CLAM-SHELL CONFIGURATION, with SUN VISOR and designated mounting hardware. The blankout sign and the mounting hardware are stated as one item.

The Blankout Sign housings shall be furnished by the same manufacturer and shall be new and current production models.

The Blankout sign shall be CAPABLE OF DISPLAYING THREE DISTINCT MESSAGES INCLUDING BLANK MESSAGE.

The Blankout Sign shall include all electrical and electronic hardware, structural materials, housings and all the necessary hardware for make up and mounting.

The Blankout Sign and its associated equipment, shall be capable of operating on a 24 hour a day, 7 day per week basis and shall conform to the physical and functional requirements of this Specification.

For Span Wire mounting, the HANGER shall be cast Aluminum and shall contain two (2) stainless steel J-Hooks with stainless steel lock washers and nuts and have seven (7) notches to position the hanging signal. A double weather head entrance shall be used. The weather head entrance Bushing shall have a 1.5 inch hole for wire entry. That entrance diameter shall be maintained throughout the weather head without restriction or reducing the hole diameter into the sign. No special tools shall be required to tighten or adjust signs. Span wire hangers shall not require disassembly to install on span wire.

A fastener shall be installed in the bottom of the sign housing to provide for attachment to a tether cable of ¼ inch.

1.2.2 Symbolic LED Module shall Ensure that all electronic components are standard industry items that are available from wholesale electronics distributors. Provide components that are solid state" type. Do not use electro-mechanical components such as relays, transformers or solenoids. Ensure compatibility and proper triggering and operation with load switches and conflict monitors in signal controller currently used by the State of South Carolina.

1.2.2.1 LED Specifications should be the same as proposed in the final contract including the fact that removal of any display module shall not affect the operation of the remaining modules.]

1.2.2.4 Labels Identity each Symbolic LED Module with the manufacturer's name, model number, serial number, date of manufacture and lot number if applicable. 1.2.3. Packaging Each single Symbolic Blankout Sign complete with visor, and LED Symbolic module capable of displaying either a right or left arrow, as specified, completely assembled with mounting assembly and tether fastener, shall be packaged in a separate corrugated cardboard box; The box shall be clearly labeled on the END of the box in plain English, as to what's contained therein .All package shall be identified with the Department .

1.2.2.2 Lens

Provide a clear, non-glare, mat finish polycarbonate lens with a UV resistant surface treatment and super abrasion resistant properties. Ensure that the lens has light transmission properties equal to or greater than 80%. The module shall be completely sealed against moisture and dust intrusion.

1.2.2.3 Dimming

Provide a photocell and dimming circuitry to automatically reduce the light intensity of the display by 35% based on the ambient light to reduce long term degradation of the LEDs. Include a 30-second delay to prevent interference caused by extraneous light.

1.2.2.4 Labels

Identify each Symbolic LED Module with the manufacturer's name, model number, serial number, date of manufacture and lot number if applicable.

1.2.3 Packaging

Each single Symbolic Blankout Sign, complete with visor, and LED Symbolic module capable of displaying either a right or left arrow, as specified, completely assembled with mounting assembly and tether fastener, shall be packaged in a separate corrugated cardboard box. The box shall be clearly labeled on the END of the box, in plain English, as to what's contained therein. All packages shall be identified with the Department PURCHASE ORDER NUMBER. Packing lists and EQUIPMENT LABELS shall be glued to every carton showing its contents.

Each Symbolic LED Module shall be packaged in a separate corrugated cardboard box. The box shall be clearly labeled on the END of the box, in plain English, as to what's contained therein. All packages shall be identified with the Department PURCHASE ORDER NUMBER. Packing lists and EQUIPMENT LABELS shall be glued to every carton showing its contents.

1.2.4 Certification

Provide with the bids, written Certification from the Manufacturer or Vendor that ITE Standards, MUTCD standards, and all the requirements of this specification have been met.

Samples shall be provided for Department approval. The sample submitted shall be representative of typical average production units. Samples will not be returned unless requested by the vendor.

NOTE: CATALOG CUTS ARE REQUIRED TO BE SUBMITTED WITH BID

1.2.5 Warranty

During the period of SIXTY (60) MONTHS following the date of ACCEPTANCE, the Manufacturer or Vendor shall replace, at no expense to the Department (including shipping costs), any part of Symbolic LED Blankout Sign that fails by reason of defective material or workmanship.

Performance shall be warranted for a period of SIXTY (60) MONTHS of the date of installation and shall include repair or replacement of a Symbolic LED NRT/NLT Module that exhibits

1.2.1.4 Finish

The finish colors shall be FEDERAL YELLOW (13538) for the door, exterior and interior of the sign enclosure, and exterior surfaces of the visor. Apply the yellow by the dry powder method. Apply the yellow finish by electrostatic spray and heat cure. Ensure the thickness of the finish is a minimum of 2.5 mils thick. Do not apply paint to the latching hardware. Paint two coats of FLAT BLACK (37038) for the inside of the visor, and for the part of the door within the visor.

1.2.1.5 Mounting

All mounting hardware shall be furnished for Span-Wire mounting, as requested by the purchase order. Hardware for Span-Wire shall be finished FEDERAL YELLOW (13538).

light output degradation, which in the judgment of the department, cannot be easily seen at one hundred fifty feet (150') in bright sunlight with the visor on the housing or that drops below the luminous intensity output requirements of this specification. The vendor shall replace any failed modules within 30 calendar days of notification.

1.3 **Measurement**

The furnishing of No Right/Left Turn Symbolic LED Blankout Sign shall be measured by EACH with LED module installed, including ALL internal electrical and electronic hardware, structural materials, housings, and all the necessary hardware for proper mounting.

Furnishing No Right Left Turn Symbolic LED Module, measured by each, shall be complete with weather tight neoprene gasket for replacing defective existing modules if applicable.

1.4 **Payment**

Furnishing Blankout Sign with LED module with span wire mount, measured as provided above, will be paid at the contract unit price bid for:

FURNISH NO RIGHT/LEFT TURN SYMBOLIC LED BLANKOUT SIGN WITH MOUNTING ASSEMBLY FOR SPAN WIRE – EACH

Furnishing a Symbolic LED module, measured as provided above, will be paid at the contract unit price bid for:

FURNISH NO RIGHT/LEFT TURN SYMBOLIC LED MODULE – EACH

and such payment shall be full compensation for furnishing the specified equipment and for all necessary hardware and incidentals.

QUALITY - NEW (JAN 2006): All items must be new.

IV. Information for Offerors to Submit

INFORMATION FOR OFFERORS TO SUBMIT - GENERAL (JAN 2006): Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations

SHIPPING / RISK OF LOSS: F.O.B. Destination. Destination is the shipping dock of the SCDOI designated receiving site, or other location, as specified herein. (See Delivery clause)

WARRANTY - STANDARD (JAN 2006): Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.

COMPANY NAME: _____

ITEM	COMMODITY/ SERVICE	QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	55080	EACH	18		
DESCRIPTION: FURNISH NO RIGHT/LEFT TURN SYMBOLIC LED BLANKOUT SIGNWITH MOUNTING ASSEMBLY FOR SPAN WIRE					

ITEM	COMMODITY/ SERVICE	QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
2	55080	EACH	18		
DESCRIPTION: FURNISH NO RIGHT/LEFT TURN SYMBOLIC LED MODULE					

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[TASSIMO TECHNOLOGIES PLEADS GUILTY TO BID-RIGGING IN QUEBEC CITY](#)

Tassimo Technologies pleads guilty to bid-rigging in Quebec City

POSTED ON JANUARY 26, 2016

Today the Competition Bureau announced that Tassimo Technologies Canada Inc. has pleaded guilty before the Superior Court of Quebec to a bid-rigging charge in respect of the sale and supply of light emitting diode modules for traffic signals. The company was fined \$50,000 and is subject to a court order requiring the implementation of a corporate compliance program and the education of employees about bid-rigging and conspiracy offences under the *Competition Act*.

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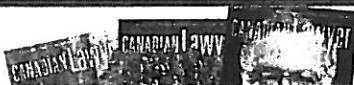
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 445 Park Avenue
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 New York, NY 10022
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London
 Dauntsey House
 48 Finsbury Square
 London EC2R 8AB England
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The title insurer that puts you
front row, centre.

Quebec company guilty of bid rigging

Written by Kelly Harris

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Quebec-based street and traffic light supplier Tassimco Technologies Canada Inc. has pleaded guilty to bid rigging following a Competition Bureau investigation.



The investigation was helped, in part, with information garnered through the bureau's immunity program.

The plea, entered at the Superior Court of Quebec, carries a \$50,000 fine and a court order for 10 years, which requires Tassimco to "implement a corporate compliance program and educate its employees about bid rigging and conspiracy offences under the Competition Act," according to the bureau's press release.

"We are pleased with this guilty plea," says competition commissioner Melanie Allard. "Bid rigging by firms seeking to cheat governments is criminal, and results in Canadian taxpayers paying artificially inflated prices."

According to the Competition Bureau, Tassimco participated in a bid-rigging process to supply the City of Quebec with light-emitting diode modules for traffic signals. The tender was intended to build on the city's energy-efficiency plan and replace incandescent traffic lights.

The bureau conducted an investigation into the initial tender worth \$2 million. Following the searches, the City of Quebec cancelled the initial bid and saved five per cent, or \$91,000, by issuing a new tender.

The plea follows charges laid in October 2006 against Electromega Ltd. of Candiac, Que., and its president, Alan Lamoureux, and Tassimco of Terrebonne, Que., and its vice president, Conrad DiPietro. Each had been charged with bid rigging under s. 47 of the Competition Act.

Lamoureux passed away in September 2009, but the charges against Electromega remained. The case remains before the court.

Dozens of bid-rigging complaints come in each year, says bureau deputy director Chris Martin. It adopted its whistleblower protection program in the 1990s and recently updated it because similar programs around the world have proven effective in combating cartels.

While he would not speak directly to the Tassimco investigation, Martin, who works in the bureau's criminal investigation section, says one example of bid rigging could be two suppliers agreeing not to compete against each other for a contract. This "bid suppression" would allow a single supplier to possibly inflate the cost of its bid.

Where the immunity program comes in is the bureau will agree not to seek criminal charges against one of the companies in the agreement if it comes forward and gives evidence necessary for a conviction.

"There is a significant incentive whenever competitors enter into such agreements to cease competing and start colluding together, that they keep it hidden and they actually take steps to avoid it being disclosed," says Martin.

Aside from bid suppression there are three other main types of bid rigging: cover bidding, bid rotation, and market division.

Cover bidding is an agreement to make inflated bids so the process gives an impression of competition.

Bid rotation is an agreement where a pre-selected supplier submits the lowest bid on a rotating basis.

Market division is where suppliers agree to stay away from each other's geographical area or specific customers.

"Our immunity process was put in place to have incentives to have participants in such schemes who could otherwise do this for months and years, to blow the whistle on their co-conspirators," says Martin. "To come to the bureau and apply for immunity from prosecution in respect to their conduct in return for full co-operation with the bureau's investigation, up to and including prosecution."

Martin says bid rigging is not confined to companies seeking to cheat government and can happen in private procurement as well.

Those convicted of bid rigging can face fines, imprisonment, or both at the discretion of the court.

Additional Info

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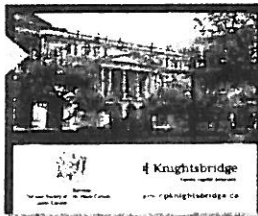
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IMPORTANT INFORMATION FOR OFFERORS

AUGUST 2011

You must follow the new South Carolina Enterprise Information System (SCEIS) vendor registration instructions found at the South Carolina Procurement Information Center website address of: <http://www.procurementsc.com>. Even if you are registered in the old procurement system. You must Still register or update your information in the new SCEIS system. Once the registration process is complete the system will generate a new SCEIS vendor user ID and password. The Offeror must keep this information current or you will not be able to submit future bids.

The following is a screenshot of the SCDOT 2011 Qualified Products List with the Manufacturer as TASSIMCO. TASSIMCO Is only located on the west coast and refers you to RAI Products in Charlotte, NC

SCDOT 2011 Qualified Products List					
Rev. 7/1/2011					
SLNO	Signal Head Group	Backlit Sign, "Symbolic" LED No Right Left Turn	Turned	LS-2021-01-01-01	0000

RAI PRODUCTS **Tassimco**

Tassimco

Technologies

Phone: 704-525-1852

Fax: 704-525-1859

Partners

RAI Products P.O. Box 240772
Charlotte, NC 28224



TASSIMCO TECHNOLOGIES INC.

Toll Free : 1 - 800 - 363-5913

www.Tassimco.com

Tassimco products are available in Alaska, California, Idaho, Montana, Nevada, Oregon, Washington and Wyoming.

For more information, please contact your local sales representative, **Mike Singson**, at 425.347.6208 or by email at Mikey@advancedtraffic.com.

<http://www.advancedtraffic.com/products/tassimco/led-signs/>

LED blank-out signs

Clear, reliable and well designed, the **Tassimco** blank-out signs meet the most stringent construction and visibility standards in effect throughout the North American and European continents. LED displays are available for most standard regulatory signs such as no left/right turn, symbolic or written words.

100% Solid-State design!

Models Available

Full range available; contact your local representative for specific models.

Downloads

- [Tassimco brochure](#)

Please note: You must have [Adobe® Reader®](#) installed to view the PDF files.

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Attachment of manufacturer's material specifications, "**catalog cut sheets**," and other manufacturer's information may be helpful to accompany these drawings. ...

RAI PRODUCTS **Tassimco**

Tassimco

Technologies

Phone: 704-525-1852

Fax: 704-525-1859

Partners

RAI Products P.O. Box 240772
Charlotte, NC 28224



TASSIMCO TECHNOLOGIES INC.

Toll Free : 1 - 800 - 363-5913

www.Tassimco.com

Tassimco Technologies

The unit manufactured by this company is packaged in a standard 16 x 18 inch signal housing and contains the white fiber optic "Walking Person" and Portland orange LED "Hand" indications that overlap on the message-bearing surface along with the numerical display. The display has 8" high numerals and is capable of displaying numbers "00" to "99" using red LED's.

Municipalities currently using this particular device include Monterey, CA and Hampton, VA.

For more information on this device, including technical specifications, contact:

Conrad Di Pietro
Tassimco Technologies
3100 Jacob Jordan
Terrebonne, QC J6X 4J6 Canada
Phone (800) 363-5913
Fax (450) 477-0047



955 Park Street
COLUMBIA, SOUTH CAROLINA 29201

Intent to Award

Posting Date: October 14, 2011

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. Protest to be filed with:

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest-mmo@mmo.state.sc.us

SCDOT intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00AM, October 25, 2011**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work or incur any cost associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to receipt of a purchase order from SCDOT. The SCDOT assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Solicitation: SB10353

Issue Date: August 8, 2011

Opening Date: August 30, 2011

Description: ANNUAL CONTRACT FOR LED BLANKOUT SIGNS – STATEWIDE

Awarded To: RAI PRODUCTS
POST OFFICE BOX 240772
CHARLOTTE, NC 28224

Award Amount: \$217,440.00

Procurement Manager: Margaret J. Oswald, CPPB

**THIS IS NOT AN ORDER
DO NOT INCUR COST PRIOR TO RECEIPT OF PURCHASE ORDER**

Skinner, Gail

From: Protest-MMO [Protest-MMO@mmo.sc.gov]
Sent: Monday, October 17, 2011 6:35 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation Number SB10353

From: George Penington[SMTP:MISTERGWP@GMAIL.COM]
Sent: Monday, October 17, 2011 6:34:34 AM
To: Protest-MMO; oswaldmj@scdot.org
Cc: Conner, Ron; Andre V. Woods
Subject: Fwd: Solicitation Number SB10353
Auto forwarded by a Rule

copy to Andre V Woods, Market Director for PC&C Enterprises and George W Penington

Chief Procurement Officer
 Materials Management Office
 1201 Main Street, Suite 600
 Columbia, SC 29201

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15, 2011

Blankout Signs
 Margaret J Oswald, CPPB Procurement Officer
 email : oswaldmj@scdot.org

Dear Sir/Madame;

Please accept this correspondence as my official notice of protest of the above referenced award, copy enclosed, as prescribed in Section 11-35-4210 of the Code.

GROUND FOR PROTEST

A. NON RESPONSIVENESS

The intended Contractor has violated the requirements and conditions detailed in items (c) (d) (e) under the responsiveness/Improper offers segment of the code.

B. NOT RESPONSIBLE

The intended Contractor has not met the requirements laid out in Items a through e of the certifications and representations clauses inherent in and detailed in the code.

C. The intended contractor has not met the qualifications standards detailed in the Standards of Responsibility R.19-445.2125

OTHER GROUNDS

A. The State has violated its own Code of Laws by awarding a contract to a contractor who has been called into question along with a supplier who has been determined to be a Bid Rigger.

B. The State Procurement Officer in conjunction with SCDOT Procurement has operated in bad faith setting up a process by which a vendor becomes a sole source without substantiation.

C. The Procurement Office restricted and eliminated competition by placing the supplier

10/17/2011

controlled product on its qualified list as the specified item then allowing the supplier to bid on the solicitation. The supplier refused to provide the specified item and its prices to competitive bidders thereby virtually eliminating all competition.

D. SCDOT Procurement has participated in an act of collusion prohibited in the code of laws if it awards as specified in the notice.

E. SCDOT further undermines open competition by not specifying and providing clarity with regard to substitutions.

F. SCDOT and the intended award recipient has violated its own code by failing to advise the proper parties about any aspect of this solicitation and proposed procurement that unnecessarily and inappropriately limits full and open competition.

G. The solicitation specifies an annual fixed price contract yet SCDOT has already intended to award (5) Five years of contract by posting an unconditional amount equaling (5) years.

RELIEF

I am requesting the abandonment of the proposed award based on one or more of the issues stipulated. I am requesting that the In-State Contractor and Certified SCDOT Contractor **Vendor #7000124529** be awarded this contract as the next lowest responsive responsible contractor.

George W. Penington
Construction Consultant
Construction Group
Home office: (843) 556-4492
cell: (843) 469-8371

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From: **George Penington** <mistergwp@gmail.com>
Date: Fri, Oct 14, 2011 at 11:19 AM
Subject: Solicitation Number SB10353
To: oswaldmj@scdot.org

Solicitation Number SB10353 Opening date 08/30/11 with one extension notice September 15, 2011
Margaret J Oswald, CPPB Procurement Officer
email : oswaldmj@scdot.org

10/17/2011

A protest is being filed due to an agrievement in connection with an intended award or award of a contract on the grounds of improper notifications in regard to results of bid offers, discrimination due to unfair review of competitors products, competition not providing pricing as requested, competitor allowed to submit bid despite company being guilty of bid rigging. Public bid opening not being held properly or being held without proper notification. The relief requested at this time is to correct the alleged improprieties.

Filed by email. Will file in writing as necessary.

George W Penington

Construction Consultant

PcC Enterprises, LLC Vendor #7000124529

843-469-8371

fax: 843-556-4492

email: mistergwp@gmail.com